

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONY LAMAR CARD,
Plaintiff,
v.
LUKE HILLMAN, *et al.*,
Defendant

CASE NO. 3:24-cv-05764-DGE
REPORT AND RECOMMENDATION
Noting Date: November 27, 2024

The District Court has referred Plaintiff Tony Lamar Card's pending Application to Proceed *In Forma Pauperis* ("IFP") and Proposed Complaint to United States Magistrate Judge Grady J. Leupold pursuant to Amended General Order 11-22.

On September 10, 2024, Plaintiff filed a Proposed Complaint and an Application to Proceed IFP, that is, without paying the filing fee for a civil case. *See* Dkts. 1, 1-1. The IFP Application was referred to the undersigned on September 11, 2024. *See* Dkt. 2. On October 1, 2024, the Court screened Plaintiff's Proposed Complaint and found it was deficient because, pursuant to Federal Rule of Civil Procedure 8, Plaintiff failed to state a claim upon which relief may be granted. *Id.* In that Order, the Court gave Plaintiff leave to file an amended complaint to

1 cure the deficiencies by November 1, 2024, and re-noted the pending IFP Application. *Id.* The
2 Court warned that failure to file a proposed amended complaint would result in the Court
3 recommending the dismissal of this matter without prejudice. *Id.*

4 Prior to the due date for filing an amended complaint, Plaintiff filed three documents with
5 the Court outlining his grievances against several federal and state officials and including
6 potential accusations of “treason” on the part of these officials. *See Dkts. 5–7.* Two of these
7 documents, docketed as “Affidavit of Truth,” and “Notice to the Court,” include a recitation of
8 facts in numbered paragraphs which he asserts are in compliance with Federal Rule of Civil
9 Procedure 10 and relate to Plaintiff’s allegations of unlawful arrest and kidnapping. *See Dkt. 5 at*
10 *2–4; Dkt. 7 at 8–10.*

11 Not one of the three tendered documents can be construed as an amended complaint, as
12 none contain “a short and plain statement of the claim showing that the pleader is entitled to
13 relief.” Fed. R. Civ. P. 8(a). *See also Dkts. 5–7.* Further, in addition to finding these documents
14 lack the form and substance of a complaint, the Court also notes they do not describe, or show
15 cause, why the Proposed Complaint (Dkt. 1-1) should not be dismissed, as none provide
16 sufficient facts to support a claim for relief or a cognizable legal theory. *See Dkts. 5–7. See also*
17 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990) (“Dismissal [of a
18 complaint] can be based on the lack of a cognizable legal theory or the absence of sufficient facts
19 alleged under a cognizable legal theory.”).

20 The date for filing an amended complaint has now passed and Plaintiff has failed to
21 comply with the Court’s October 1, 2024, Order (Dkt. 4). He has not filed a proposed amended
22 complaint correcting the deficiencies contained within the Proposed Complaint or otherwise
23 responded to the Court’s Order. As Plaintiff has failed to respond to the Court’s Order and
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1 prosecute this case, the Court recommends this case be **DISMISSED without prejudice** and the
2 IFP Application (Dkt. 1) be **DENIED as moot**.

3 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the parties
4 shall have fourteen (14) days from service of this report to file written objections. *See also* Fed.
5 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
6 *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of
7 those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda*
8 *v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time
9 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
10 November 27, 2024, as noted in the caption.

11 Dated this 13th day of November, 2024.

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Grady J. Leupold
United States Magistrate Judge